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Official 7

OGC REVIEW COMPLETED

15 November 1955

MEMORANDUM FOR:

25X1A8A

ATTENTION :

25X1A9A

SUBJECT :

Passports for Aliens

1. The problem of obtaining a U. S. passport for a person who is not a U. S. citizen was first formally presented to this Office in 1948. A request from the Chief of what was then FHM led to a thorough analysis and the development of what we still consider a supportable legal basis for granting passports to aliens who have sworn an oath of allegiance to the U. S. Our position was informally accepted by the Assistant Solicitor General and the Legal Advisor to the State Department. Unfortunately, the late head of the Passport Division, Mrs. Shipley, would not agree; and, as far as our files show, there has been no further Agency action since June 1951. The following is a summary for your information.

2. The legal complications arise from the U. S. Code, Title 22, § 212 which provides that:

"No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States."

At the risk of what may appear to be a statement of the obvious, some definitions are pertinent. A "citizen" is a person who acquires citizenship through birth or naturalization. The term "national" includes both citizens and those persons who are not citizens but owe permanent allegiance to the U. S. An "alien" is any person who is not a citizen or national. "Allegiance" may be either permanent or temporary, but neither courts nor lay scholars seem in agreement on the essence of it.

3. Prior to the present immigration law (the so-called "McCarran Act"), an applicant for citizenship was required to file a "declaration of intention". This act did not of itself create citizenship but it did accomplish a change in status. In fact, for a period of thirteen years, ending in 1920, a law provided for issuance of passports to declarants. The fact that a provision so specific was repealed, of course, provided the Passport Division with an argument against our request. The main thrust of our proposal however is based on the proposition that the present language "whether citizens or not" is not a specific exclusion of aliens. We recognize the fact that it may have been intended only to extend beyond "citizens" to "nationals" but we contend that, given the proper justification, the language may be expanded to cover an intermediate group who lie between "nationals" and "aliens". Whatever the present political analysis of "allegiance" may be, it is clear that it cannot be divided. For a person without a legal country or who has forewarn allegiance to another sovereign, we maintain that where it is in the best interest of the U. S. the diplomatic protection of a passport can be extended to those alien-nationals abroad who have taken an affirmative oath of allegiance to the U. S. even though they have not fulfilled the requirements for citizenship. The allegiance in this instance would be tantamount to "permanent" allegiance if a distinction is required beyond the express language of the act. That, in substance, is our argument. The Passport Division declined to include aliens and cited the repeal of the earlier law specifically granting passports to declarants. They maintained that any action by the alien casting off allegiance to a foreign government was irrelevant since legally he owed such allegiance to the foreign country until his nationality was lost. What they seemed to ignore was the fact that in most cases, the foreign sovereign to whom he had once owed allegiance no longer existed and that in point of fact he had already lost one nationality without yet acquiring another. There is the anomaly of technical allegiance to a sovereign when the physical presence of the subject in the sovereign country would very likely result in the subject's death.

4. If we can persuade the State Department that changing conditions and our unusual requirements justify our contentions, we would hope they would take action on their own to meet our special needs but they may insist on a formal opinion from the Attorney General. We have no assurance, of course, that he will agree with our contentions. Assuming, however, that the opinion is favorable, it is a question whether we can accomplish what we want through a limited internal control in the Passport Division or whether the Passport Regulations (promulgated by Executive Order of the President) must be changed. If the latter were required, language would have to be found that

would provide us adequate security without opening the gate to a deluge of requests from other aliens with whom we have no connection. In any event, there would have to be a showing of allegiance to the U. S. and an absence of conflicting ties of foreign nationality.

5. Attached hereto are pertinent documents marked from 1 to 19 in chronological sequence. For particular attention, please note Nos. 5 and 7.

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Assistant General Counsel

Attachments - 19

OGC/CWP:mks

Distribution:

- 2 - Addressee
- ✓1 - Subject
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MISSING PAGE

ORIGINAL DOCUMENT MISSING PAGE(S):

NO ATTACHMENTS (19)